

DAYTON, OH

Wellhead Operation District and Wellfield Protection Overlay District

Contact: Mr. Dusty Hall

Dayton Environmental Protection Manager

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Zoning Ordinance

Adopted: 1988

AN ORDINANCE

Supplementing the Revised Code of General Ordinances by the Enactment of Sections 150.03844 through 150.600~ through 150.604, 150,610 through 150,613 and 150.620 to Create and Establish Land Use regulations for the well head Operation District (WO) and the well Field Protection Overlay District (WP) Amending the Official zoning map to map the Well Head Operation District (WO) and the Well Field Protection Overlay District (WP) , and Declaring an Emergency.

WHEREAS, The safety and potability of water supply requires that lands proximate to the City's wellfields be subject to land use controls uses injurious to the public water supply

WHEREAS, Commercial and industrial uses if unregulated have an immediate probability of permitting the introduction toxic substances into the water supply;

WHEREAS, the timely implementation of the ordinances set forth herein is necessary for the prevention of contamination the water supply and the protection of public health, it is necessary that this ordinance take effect at an early date; therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That the Revised Code of General Ordinances and it is hereby supplemented by the enactment of Sections 150.03824 through 150.03833, 150.600 through 150.604, 150.610 through 150.613 and 150.620 which shall read as follows:

DEFINITIONS

150.03824 Aquifer

"AQUIFER." A glacial formation, group of glacial formations, or part of glacial formation that contains enough saturated permeable material to yield significant quantities of water.

150.03825 REGULATED SUBSTANCES

"REGULATED SUBSTANCES." Substances to be REGULATED, hereinafter referred to as REGULATED Substances, mixtures of chemicals which are health hazards. REGULATED

Substances include:

(1) Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure Including carcinogens, toxic and highly toxic agents, reproductive toxins, irritants, corrosives, Sensitizers hepatotoxins, nephrotoxins, neurotoxins, agents which the hematopoietic system, and agents which damage the skin, eyes, or mucous membranes.

(2) Mixtures of chemicals which and have been determined to be a be a health hazard.

(3) Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and which comprises one (1)
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percent or greater of the composition on a weight per unit weight basis, and mixtures of chemicals which include a carcinogen if the concentration of the carcinogen in the mixture is one tenth of OfIC (~.1) percent or greater of the composition on a weight per unit weight basis.

(A) ingredients of mixtures prepared within the WO Wellhead Operation District and the WP Well Field protection Overlay District in cases where such ingredients are health hazards but comprise less than one tenth of one (0.1) percent of the mixture (on a weight per unit weight basis) if carcinogenic, of less than one (1.0) percent of the mixture (on a weight per unit weight basis) if non-carcinogenic.

(5) petroleum and non-solid petroleum derivatives (except non-PCB dielectric fluids)

150.03826 ONE YEAR CAPTURE AREA

~~ONE YEAR CAPTURE AREA.~ The area around the public water supply wellfields delineated by the one year travel time contour.

150.03827 DiRECT RECHARGE AREA

"DiRECT RECHARGE AREA." That portion of a drainage basin in which water infiltrating vertically from the surface will intercept the water table.

150.G3B2B RECHARGE LAGOON

"RECHARGE LAGOON." A body of water designed and maintained by man to add water to the groundwater at a rate greater than that occurring naturally.

15~ . ~3B29 WELL FIELD

"WELL FIELD." A tract of land that contains a number of wells for supplying water.

~ POTABLE WATER

"POTABLE WATER." Water that is satisfactory for drinking, culinary and domestic purposes. meeting current drinking water standards.

15~.~3S31 ZONE OF INFLUENCE

"ZONE OF INFLUENCE." A zone delineated by iso-travel time contours around wellfields. The zone is calculated. based on the rate of movement of graundwaters in the vicinity of wells with an allowance for the dispersion Qf a pollutant entering into and moving with the groundwater.

15~.~3S32 TRAVEL TIME CONTOUR

"TRAVEL TIME CONTOUR." A locus of points from which water takes an equal amount of time to reach a given destination such as' a well or well field.

ISG.C'2B33 UNDERGROUND STORAGE. TANK

"UNDERGROUND STORAGE TANK," Any one or combination of tankS (including underground pipes connected thereto) which is used to contain an accumulation of Regulated Substances and the volume of which (including the volume of underground pipes connected thereto) is ten (10) percent or more beneath the surface. of the ground. Flow~through process tanks are excluded from the definition of underground storage tanks.

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WO WELLHEAD OPERATION DISTRICT

150.600

The WO Well flead Operation District is designed to safeguard the public health safety and welfare of Citizens and institutions that

are customers of the Dayton Water System by regulating the Land use and the storage, handling, use and/or production of Regulated Substances within the zone of influence. The intent of this designation is to protect the community.s potable water Supply against contamination. This district will be mapped on property owned by the City at the location of any presently city-owned

and operated or designated future or proposed public water supply

well, recharge lagoon, or other related water facility as part of the City of Dayton Master Plan for Water Supply and Treatment.

150.601 PERMITTED USES

(A) Municipal water supply and treatment facilities in accordance with the City of Dayton

Master Plan for Water Supply and Treatment.

(B) Public parks, playgrounds, golf courses and community centers.

150.602 CONDITIONAL USES

(A) Public utility uses as follows:

(1) Electric and telephone substations.

(2) Gas regulator and meter station buildings

(3) Police and fire Stations

(4) Electric transmission towers and Structures

Radio, television, or other transmission towers or maSts, and the usual accessory buildings, Only after their height and location have been approved by the government agency charged with the responsibility for maintaining air safety and provided there is a yard area with a radius of half the height of the tower or mast.

150.603 GROUNDWATER PROTECTION STANDARDS

Use of Regulated Substances in conjunction with municipal water supply and treatment activities shall not be restricted by this chapter.

(B) Use of Regulated Substances in conjunction with public parks, playgrounds, golf courses and community centers shall be in accordance with the City of Dayton Park and Recreation Management Plan for Maintenance of Sensitive Areas.

Use of Regulated Substances in conjunction with Conditional uses in this district shall be limited to:

(1) The aggregate of Regulated Substances in use may not exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.

(2) The total use of Regulated Substances may not exceed fifty (50) gallons or four hundred (400) pounds in any twelve (12) month period.

(D) A limited exclusion from the provisions of 150.603(C) is authorized for non-routine maintenance or repair of property or equipment. The use of Regulated Substances under this exclusion shall be limited to:

(1) The aggregate of Regulated Substances in use may not exceed fifty (50) gallons or four hundred (400) pounds at any time.

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(2) The total use of Regulated Substances may not exceed one hundred (100) gallons or eight hundred (800) pounds in any twelve (12) month period.

(E)

Storage of Regulated Substances in conjunction with municipal water supply and treatment activities shall not be restricted by this chapter.

(F) Storage of fuel and lubricants for vehicle operations in conjunction with permitted and conditional uses in this district shall be in underground tanks placed above the floor surface of a below grade vault. Said vault shall allow access for physical inspection of the tank for leakage and the interior of the vault shall be continuously monitored and alarmed to provide for automatic and immediate detection of any release from the tank.

(G)

Notwithstanding other provisions of this chapter, nonconforming uses in this district presently utilizing underground storage tanks for fuel and lubricants for vehicle operations shall be permitted to replace existing tanks with those constructed as per the specifications of 150.603(f) above and not exceeding the capacity of existing tanks. Replacement of underground tanks for Regulated Substances other than fuel and lubricants for vehicle operations is not permitted.

(H)

Storage of Regulated Substances other than fuel and lubricants for vehicle operations in conjunction with permitted and conditional uses in this district is prohibited.

(I) As part of the findings required under Section 150.424 (D) , the zoning Administrator shall utilize the Hazard Potential Ranking System. Section 150.620 to assist in the determination of intensity of use within this district. No substitutions of a non-conforming use shall be permitted which result in an increase of the Hazard Potential Ranking on a parcel within this district.

(J) All uses within this district shall be connected to the public wastewater disposal system.

WP WELL Field PROTeCTION OVERLAY DISTRICT

150.610 PURPOSE

The WP Well Field Protection Overlay District is designed to safeguard the public health safety and welfare of citizens and institutions that are customers of the Dayton Water System by regulating the land use and the storage, handling, use and/or production of Regulated Substances within the zone described as the land area adjacent to the existing and proposed municipal water well fields. within the city, not included within the WO Well Field Operation District, which lies within the one (1) year capture area, including a one thousand (1,000) foot strip of land outside of

the direct recharge area in locations where the direct recharge area within the one (1) year capture area impinges on the aquifer boundary. The intent of this designation is to protect the community's potable water supply against contamination.

150.611 PERMITTED USES, BULK AND YARD REGULATIONS

The permitted uses, bulk and yard regulations within the WP well Field Protection Overlay

District shall be those of the underlying zoning district.
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150.612 coNdiTiONAl USES

(a) The conditional uses within the wp well Field Protection overlay district shall be those of the underlying zoning district, except as specified in 150.612(B) and 150.612 (C)

(B) Sanitary land fills, land fills composed of demolition debris and dry wells are prohibited uses in the WP Well Field Protection Overlay d istrict.

(C)

The excavation, extractjcn. mining or processing of sand, gravel and limestone from the earth for resale shall remain as conditional uses in the WP well field Protection Overlay district subject to BZA approval of an excavation and facilitiCs plan that includes, but is not limited to:

1. an existing site plan with topographic detail at 2' contour intervals, all planimetric information, depth to ground water and flood plain characteristics where applicable
2.
the proposed extent and depth of excavations
3. slope angle of excavation walls (any final slopes shall be at the angle of repose for the remaining material)
4. use and disposition of the spoil and/or overburden materials from the excavations including a landscaping and vegetation plan to stabilize any disturbed material
5. surface drainage plan
 - a) drainage into on site excavations from proximate off site transportation facilities Such as roadways and roadbeds and off site watercourses is prohibited unless the applicant provides a plan which otherwise protects the excavations from off site waterborne regulated substances.
 - b) the final on site grading shall minimize all surface drainage into the excavations.
6. a post-excavation and operation land use plan
7. a security plan (unauthorized access shall be Strictly prohibited as long as any excavations remain on Site)

The requirements of this section shall be in addition to any applicable regulations in this chapter.

150.613 GROUNDWATER PROTECTION STANDARDS

(A) Use of Regulated Substances in conjunction with permitted and conditional uses in this district shall be limited to:

- (1) The aggregate of Regulated Substances in use may not exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.
- (2) The total use of Regulated Substances may not exceed fifty (50) gallons or four hundred (400) pounds in any twelve (12) month period.

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A limited exclusion from the provisions of 150.613(A) is authorized for non-routine maintenance or repair of property or equipment. The use of Regulated Substances under this exclusion shall be limited to:

- (1) The aggregate of Regulated Substances in use may not exceed fifty (50) gallons or four hundred (400) pounds at any time.
- (2) The total use of regulated Substances may not exceed one hundred (100) gallons or eight hundred (800) pounds in any twelve (12) month period.

(C) A limited exclusion from the provisions of 150.613(A) is authorized for medical and research laboratory uses, provided however, Regulated Substances shall be stored, handled or used in containers not to exceed five (5) gallons or forty (40) pounds of each substance and the aggregate inventory of Regulated Substances shall not exceed two hundred and fifty (250) gallons or two thousand (2,000) pounds.

(D) A limited exclusion from the provisions of 150.613(A) is authorized for Regulated Substances which are cleaning agents, provided however such cleaning agents are packaged for personal or household use or are present in the same form and concentration as a product packaged for use by the general public, and provided the aggregate inventory of such cleaning agents shall not exceed one hundred (100) gallons or eight hundred (800) pounds at any time. In no case shall Regulated Substances claimed under this exclusion include hydrocarbon or halogenated hydrocarbon solvents.

(E) Storage of fuel and lubricants for vehicle operations and fuel for building and/or processing heating in conjunction with permitted and conditional uses in this district shall in underground tanks secondarily contained and monitored.

(F)

Notwithstanding other provisions of this chapter, non-conforming uses in this district presently utilizing underground storage tanks for fuel and lubricants for vehicle operations and fuel for

building and/or processing heating shall be permitted to replace existing tanks with those constructed as per the specifications of 159.613 CE) above and not exceeding the capacity of existing tanks. Replacement of underground tanks for Regulated Substances other than the above noted fuels and lubricants Is not permitted.

(C) As part of the findings required under Section 159.424 CD), the zoning Administrator shall utilize the Hazard Potential Ranking System, Section 150.424 to assist in the determination of intensity of use within this district. No substitutions of a non-conforming use shall be permitted which result in an increase of the Hazard Potential Ranking on a parcel within this district.

150.620 HAZARD POTENTIAL RANKING SYSTEM

In order to assess the risk for potential groundwater contamination, a hazard ranking has been developed for various activities categorized by their standard industrial Classification (SIC) code. This ranking is based on the kind of materials commonly associated with each use looking only at the most critical hydrologic factors.

Table 1 below lists the site hazard potential by land use activity on a scale of 1-9, with 1 being a low hazard and 9 a very high hazard. This rating is based on the intrinsic hazards posed by different land uses and is related to the material commonly used or stored on the site or the types and amounts of waste commonly discharged.

Table 2 below lists the hazard potential determined on the basis of materials known to be used, stored, or disposed of at a specific site.

If the two tables referenced above indicate different site hazard potential ratings for the SIC-coded land use activity and the materials found on-site, the higher of the two scores is the rating for the site.

Table 1 Contaminant Hazard Potential Ranking Classified by Source

SIC No.	Description of Waste Source	Hazard Potential
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Initial rating

01	Agricultural Production Crops	1-2
02	Agricultural production- Livestock	
021	Livestock, except Dairy, and Poultry and Animal Specialties	3 (5 for feedlots)
024	Dairy Farms	4
025	Poultry and Eggs	4
027	Animal specialties	2-4

029	General Farms, Primarily Livestock	2
10	Metal Mining	
101	Iron Ores	4
102	Copper Ores	6
103	Lead and Zinc Ores	5
104	Gold and Silver Ores	6
105	Bauxite and Other Aluminum Ores	5
106	Ferroalloy Ores Except Vanadium	5
108	Metal Mining Services	4
1092	Mercury Ore	6
1094	Uranium-Radium-Vanadium ores	7
1099	Metal Ores Not Elsewhere classified	5
11	Anthracite Mining	7
12	Bituminous Coal and Lignite Mining	7
13	Oil and Gas Extraction	
131	crude Petroleum and Natural Gas	7
132	Natural Gas Liquids	7
1381	Drilling Oil and Gas Wells	7
1382	Oil and Gas Field Exploration Services	1
1389	Oil and Gas Field Services not elsewhere classified	Variable, depending on Activity
14	Mining and Quarrying of Non- Metallic Minerals, Except Fuels	
141	dimension Stone	2
142	Crushed and Broken Stone, Including Riprap	2
144	Sand and Gravel	2
145	Clay, Ceramic, and Refractory Mineral	2-5
147	Chemical and Fertilizer Mineral Mining	4-7
148	Nonmetallic Minerals Services	1-7
149	Miscellaneous Nonmetallic minerals, Except Fuels	2-5

- 16 Construction other Than
building Construction
 - 1629 Heavy Construction, Not
Elsewhere Classified (Dredging,
Especially in Salt Water) 4

- 20 Food and Kindred Products
 - 201 Meat Products 3
 - 202 Dairy Products 2
 - 203 Canned and preserved Fruits
and Vegetables 4
 - 204 Grain Mill Products 2
 - 205 Bakery Products 2
 - 206 Sugar and Confectionery
Products 2
 - 207 Fats and Oils 3
 - 208 Beverages 2-5
 - 209 Misc. Food Preparation and
Kindred Products 2

- 22 Textile Mill Products, All Except
Listings Below
 - 223 Broad Woven Fabric Mills,
Wool (including dyeing and
finishing) 6
 - 226 Dyeing and Finishing Textiles,
Except Wool Fabrics and
Knit Goods 6
 - 2295 Coated Fabrics, Not
Rubberized 6

- 24 Lumber and Wood Products,
Except Furniture
 - 241 Logging Camps and Logging
Contractors 2
 - 242 Sawmills and Planing Mills 2
 - 2435 Hardwood Veneer and Plywood 4
 - 2436 Softwood Veneer and Plywood 4
 - 2439 Structural Wood Members,
Note elsewhere classified
(laminated wood-glue) 3
 - 2491 Wood Preserving 5
 - 2492 Particle Board 4
 - 22499 Wood Products, Not Elsewhere
Classified 2-5

26	Paper and Allied Products	
261	Pulp Mills	6
262	Paper Mills aExcept Building	6
	Paper Mills	
263	Paperboard Mills	6
28	Chemicals and Allied Products	
2812	Alkalies and Chlorine	7-9
2813	Industrial Gases	-
2816	Inorganic Pigments	3-8
2819	Industrial Inorganic Chemicals	
	Not elsewhere classified	3-9
2821	Plastic Material, Synthetic	
	Resins, and nonvulcanizable	
	elastomers	6-8
2822	Synthetic Rubber	
	vulcanizable elastomers	6-8
2823	cellulose man-made fibers,	
	synthetic organic fibers,	
	except cellulosic	6-8
2831	biological products	6-9
28	Chemicals and Allied Products	
2833	Medicinal Chemicals and Botanical	
	Products	3-8
2834	Pharmaceutical Preparations	6-9
2941	Soap and Other Detergents,	
	Except specialty cleaners	4-6
2842	Specialty Cleaning, Polishing,	
	and Sanitation Preparation	3-8
2843	Surface Active Agents,	
	finishing Agents, Sulfonated	
	Oils and Assistants	6-8
2844	Perfumes, Cosmetics, and	
	Other toilet Preparations	3-6
2851	Paints, varnish, lacquers,	
	enamels, and allied products	5-8
2861	Gum and wood chemicals	5-8
2865	Cellulic (coal Tar) Crudes, and	
	cyclic intermediates, dyes and	
	organic pigments (Lakes and	
	toners)	6-9
2869	Industrial Organic Chemicals	
	Not elsewhere listed	3-9

2873 Nitrogenous fertilizers	7-8
2874 phosphate fertilizers	7-8
2875 Fertilizer Mixing Only	5
2879 Pesticides and agricultural chemicals, not elsewhere listed	5-9
2891 Adhesives and sealants	5-8
2892 Explosives	5-8
2893 printing Ink	6-9
2895 Carbon Black	1-3
2899 Chemicals and chemical preparations, not elsewhere listed	3-9
29 Petroleum Refining and Related Industries	
291 Petroleum Refining	8
295 Paving and Roofing Materials	7
299 misc. Petroleum and Coal Products	7
30 Rubber and Miscellaneous Plastics Products	
301 tires and Inner tubes	6
302 Rubber and Plastic footwear	6
303 Reclaimed Rubber	6
304 Rubber and Plastic Hose and Belting	4
306 Fabricated rubber Products, not elsewhere classified	4
31 Leather and leather products	
leather tanning and finishing	8
(remaining three digit codes)	1-3
32 Stone, Clay, Glass, and Concrete products	
321 flat glass	4
322 glass and glassware, pressed or blown	4
324 cement, hydraulic	3
3274 lime	3
3291 Abrasive products	3
3292 asbestos	3
3293 Gaskets, packing, and Sealing devices	3
33 Primary Metal Industries	

- (except as noted below)
- 3312 Blast Furnaces, steel works,
and rolling and finishing
mills 6
- 333 primary smelting and
refining of nonferrous metals 7
- 34 Fabricated Metal Products,
Except Machinery and Transi
portation equipment except
as noted below 5
- 347 coating, engraving and
allied services 8
- 3482 small arms amm8unition 7
- 3483 Ammunition, except for small
arms, not elsewhere classified 7
- 3389 Ordinance and Accessories,
not elsewhere classified 7
- 349 Misc. Fabricated Metal
Products 3-6
- 35 machinery, except electrical 5-7
- 36 Electircal and Elctronic
Machinery, equipmetn and
Supplies (expcet as noted below 5
- 3691 Storage Batteries 8
- 3692 Primary Batteries, Dry and Wet 8
- 37 Transportation Equipometns 5-8
- 38 Measuring, Analyzing, and
Controlling instruments:
Photographic, medical, and
Optical good; watches and
clocks (escept and noted
below) 4--6
- 386 Photographic equipment and
supplies 7
- 39 Miscellaneous Manufacturing
Industries 3-7
- 49 Electir, Gas, and Sanitary Services
- 491 Electri Services a 3-5
- 492 gAS pRODUCTION AND

Distribution	3	
4952 Sewage systems	2-5	
4953 Refuse Systems (landfills)	5-9	
496 Steam supply	2-4	

Table 2 contaminant Hazard Potential Ranking Classified by Type
Description Hazard Potential ID Number
initial Reading

Solids

Ferrous Metals	1-4	1100	
Non-ferrous metals	1-7	1200	
Resins, Plastics, and Rubbers	2	1300	
Wood and Paper Materials (except as noted below)	2	1400	
Bark	4	1401	
Textiles and Related fibers	2	1500	
Inert Materials (except as noted below)	2	1600	
Sulfide mineral-bearing mine tailings	6	1601	
slag and other combustion residues	5	1602	
Rubble construction and demolition mixed waste	3	1603	
Animal Processing wastes (except as noted below)	2-4	1700	
Processed skins, hides, and leathers	6	1701	
Live animal wastes, raw manures (feedlots)	5	1703	
Composts of animal waste	2-4	1704	
dead animals	5	1705	
Edible fruit and vegetable remains- putrescibles	2-3	1800	

Liquids

Organic Chemicals (must be chemically classified)		2000	
Aliphatic (fatty) Acids	3-5	2001	
Aromatic (benzene) Acids	7-8	2002	
Resin Acids	-	2003	
Alcohols	5-7	2004	
Aliphatic Hydrocarbons (petroleum derivatives)	4-6	2005	
Aromatic hydrocarbons (benzene derivatives)	6-8	2006	
Sulfonated hydrocarbons	7-8	2007	
Halogenated hydrocarbons	7-9	2008	
Alkaloids	7-9	2009	

Aliphatic amines and their salts	1-4	2010
Anilines	6-8	2011
Pyridines	2-6	2011
Phenols	7-9	2013
aldehydes	6-8	2014
Ketones	6-8	2015
Organic Sulfur Compounds (Sulfides, Mercaptans)	7-9	2016
organometallic compounds	7-9	2017
Cyanides	7-9	2018
thiocyanides	2-6	2019
Sterols	-	2020
Sugars and Cellulose	1-4	2021
esters	6-8	2022
Inorganic Chemicals (must be chemically classified)		
Mineral and metal acids	5-8	2101
mineral and metal bases	5-8	2102
Metal Salts, Including Heavy metals	6-9	2103
Oxides	5-8	2105
Sulfides	5-8	2105
Carbon and graphite	1-3	2106
Other Chemical Process Wastes Not Previously Listed (must be chemically classified)		2200
inks	2-5	2201
Dyes	3-8	2202
Paints	5-8	2203
Adhesives	5-8	2204
Pharmaceutical Wastes	6-9	2205
Metal Treatment wastes	7-9	2207
Solvents	6-9	2208
Agricultural Chemicals (pesticides, Herbicides, fungicides, etc.)	7-9	2209
Waxes and tars	4-7	2210
Fermentation and Cultures Wastes	2-5	2211
oils, Including Gasoline, Fuel Oil, etc.	5-8	2212
Soaps and Detergents	4-6	2213
OTHER ORGANIC OR INORGANIC CHEMICALS, includes radioactive wastes	4-8	2300
conventional Treatment Process Municipal sludges from Biological Sewage treatment	4-8	2301
From water treatment and conditioning		

plants (must be chemically classified)
2-5 2302

ID number is for identification of waste types in the reporting form

1. Classification based on material in Environmental Protection Agency publication, 670-2-75-024, pp. 79-85, prepared by Arthur d. Littel, Inc., and published in 1975

2. For individual material ranking, refer to solubility-toxicity tables prepared by Versar, Inc., for the Environmental Protection Agency (source: MDNR, June 1980).

Source: WMSRDC. A Pollutant Nature Sampling Plan for Groundwater contamination in Region 14 Muskegon, Michigan: West Michigan Shoreline Regional Development Commission, November 1980).

Section 2 That the district boundary lines approved by the City Plan Board on May 23, 1986, Case No. 6-88 effectuating a zoning for the following generally described areas:

Area I includes the area within the City of Dayton on either side of the Mad River generally between Valley Street and Springfield Street from Findlay Street to the eastern corporation limits. The underlying zoning will remain the same and the WP Well Field protection overlay District shall be established, except for certain land owned by the City of Dayton which will be mapped as WO Well Head Operation District.

B. Area 2 includes the area within the City of Dayton on either side of the Great Miami River generally between Webster Street and Troy Pike from Stanley Avenue to the northern corporation limits. The underlying zoning will remain the same and the WP Well Field Protection Overlay District shall be established, except for certain land owned by the City of Dayton which will be mapped as WO Well Head Operation District.

C. Area 3 is a small area in the DeWeCSC Neighborhood within the City of Dayton in the vicinity of North Dixie Drive and Ridge Avenue. The underlying zoning will remain the same and the WP Well Field Protection Overlay District shall be established.

Section 3. For the reasons stated this ordinance is declared to be a shall take effect immediately upon its passage.

Passed by the Commission. 1988
Signed by the Mayor, 1988

Supplementing the Revised Code of General Ordinances
By The Enactment of Sections 53.01 Through 53.06 and

53.99 to Provide for Control of potential Public Water Supply Pollutants and Providing Penalties for Violations Thereof and Declaring an Emergency.

Whereas, the ground water in the aquifer underlying the Miami Valley and the City of Dayton Is the source of drinking water Supply in this area and ground water is a sensitive natural resource; and

Whereas, the City desires to approach public water Supply and well field protection In a rational and objective manner by instituting pollution source controls; and

Whereas, the City desires to regulate potential pollutants to the fullest extent authorized by law by enacting this legislation as a measure To ensure the protection and availability of public drinking water supplies; and

Whereas, the City desires to assume and maintain a leadership role in protection of regional drinking water resources through Its own efforts and in cooperation with other local governments and state and federal agencies; and

Whereas, it is determined that such legislation Is consistent with the City's policy of protecting the water resources;

Whereas, the timely implementation of the ordinances set forth hereIn Is necessary for the prevention of contamination of the water supply and the protection of public health, it Is necessary that this ordinance take effect at an early date; Now, therefore,

BE IT ORDAINED By THE COMMISSION OF THE CITY OF DAYTON:

Section I. That Sections 53.01 to 53.06 and 53.9~ of the Revised Code of General Ordinances be enacted as follows:

Section 53.01 GENERAL PROVISIONS

(A) ~PURPOSE The purpose of Sections 53.01 through 53.06 is to safeguard the public health, safety and welfare and to provide for the protection and availability of existing and future potable water supply by instituting rational and objective requirements, standards and criteria for the control of toxic or otherwise hazardous substances within specifically defined areas in and around the City's present and future wells and well fields, thereby enhancing the protection of the public potable water supply from contamination.

(B) SCOPE

(i) The provisions of Sections 53.01 through 53.06 shall be effective within the City of Dayton corporate limits, except as otherwise provided. This ordinance provides for pollution control pertaining to the public water supply.

(2) Nothing contained in Sections 53.01 through 53.06 shall be construed so as to interfere with any existing or future lawful requirements that may be, or heretofore were, imposed by any other public body authorized to enact sanitary, health or water pollution abatement restrictions so long as such requirements are consistent with, or more stringent than, the stated purpose of this ordinance.

(3) Nothing contained in Sections 53.01 through 53.06 shall be construed so as to interfere with the duties and powers of the Director of Water as set forth in Section 50.42 of the R.C.G.O.

(C) ADMINISTRATION Except as Otherwise provided herein, the Director of the Department of Water for the City of Dayton, or his designated agents, hereinafter referred to as Director, shall administer, implement, and enforce the provisions of Sections 53.01 through 53.06.

(D) NOTICE OF VIOLATION

(1) Any person found in violation of any provision of Sections 53.01 through 53.06 or any order, requirement, rule or regulation issued under the authority of such sections will be served with a written notice stating the nature of the violation and providing reasonable time for compliance; provided however, written notice of violation may be dispensed with under the conditions described in Section 53.03C6), R.C.G.O. and provided further, that if the Director has previously promulgated a schedule of compliance or issued an order addressing the same type of or a similar violation and the time for compliance has passed, the Director may dispense with establishing another time period for compliance.

(2) The notice shall be served in the manner provided by law for the service of civil process. Where the address of the violator is unknown, service may be made upon the Owner of the property involved at the tax-mailing address of the owner as shown on the County tax record.

(E) INSPECTIONS Subject to applicable provisions of law, the Director or authorized designee bearing proper identification, shall be permitted to enter private property at any reasonable time, with reasonable cause or with prior notification, for such purposes as inspection, observation, measurement, sampling and records examination pertaining to

the requirements of this ordinance to ensure that activities are in accordance with the provisions at Sections 53.01 through 53.06. Upon request of the entity which is the subject of the inspection and if permitted by the Ohio Public Records Law, information obtained as a result of the inspection shall be maintained as confidential. If the Owner or tenant does not consent to the entry of the Director for the above stated purposes, the Director may apply to a court of competent jurisdiction for an appropriate warrant or other authority to enter said property.

(F) VANDALISM No person shall maliciously, willfully, or negligently break, damage,

destroy, uncover, deface, or tamper with any structure, appurtenance, property, or equipment which is a part of or used in conjunction with the City's water facilities, or which results in the violation of Sections 53.01 through 53.06.

(G) SEVERABILITY~ A finding by any court or other jurisdiction that any part or provision of this ordinance is invalid shall not affect the validity of any other part or provision of this ordinance which can be given effect without the invalid parts or provisions.

(H) SUBJECT AREA

(1) The Area subject to the provisions of Sections

53.01 through 53.06 is the Well Field Protection Overlay District as shown on the official Zoning Map of the City of Dayton, Ohio.

(2) Maps designating the Well Field Protection Overlay be included in The Official Zoning Map for the city of Dayton, Ohio.

(I) DETERMINATION OF APPLICABILITY it shall be the responsibility of any person owning real property and/or owning or operating a business within the City of Dayton corporate limits to make a determination of the applicability of Sections 53.01 through 53.06 as it pertains to the property and/or business under his ownership or operation and his failure to do so shall not excuse any violations of said sections.

Section 53.02 REGULATED SUBSTANCES

(A) DEFINITION

The substances to be regulated, hereinafter referred to as Regulated Substances, are chemicals and mixtures of chemicals which are health hazards. Regulated Substances include:

3.

(1) Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure including carcinogens, toxic and highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.

(2) Mixtures of chemicals which have been tested as a whole and have been determined to be a health hazard.

(3) Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and which comprises one (1) per cent or greater of the composition on a weight per unit weight basis, and mixtures of chemicals which include a carcinogen in the concentration of the carcinogen in the mixture is one tenth of one (0.1) per cent

or greater of the composition on a weight per unit weight basis. (4) ingredients of a mixture prepared

MAYOR OF THE CITY OF DAYTON, Ohio

(C) Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure including carcinogens, toxic and highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lung, skin, eyes, or mucous membranes.

(2) mixtures of chemicals which have been tested as a whole and have been determined to be a health hazard.

(3) Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and which comprises one (1) per cent or greater of the composition on a weight per unit weight basis, and mixtures of chemicals which include a carcinogen if the concentration of the carcinogen in the mixture is one tenth of one (0.1) per cent or greater of the composition on a weight per unit weight basis.

(4) ingredients of mixtures prepared within the Welihead Operation District and the Well Field Protection Overlay District in cases where such ingredients are health hazards but comprise less than one tenth of one (0.1) per cent of the mixture (on a weight per unit weight basis) if carcinogenic, or less than one (1) per cent of the mixture (on a weight per unit weight basis) if non-carcinogenic.

(5) Petroleum and non-solid petroleum derivatives (except non-PCB dielectric fluids).

(B) MANAGEMENT

(1) No person shall place, deposit, or permit to be deposited, store, process, use, produce, dispose of, transport, or discharge, hereinafter referred to as "handle," any regulated substance on public or private property within the City of Dayton, or in any area under the jurisdiction of said City, except as provided by law, statute, ordinance, rule or regulation.

(2) Any Violation of Division (B)(1) of this Section is hereby determined to be a nuisance.

4.

(2) The total use of Regulated Substances may not exceed fifty (50) gallons or four hundred (400) pounds in any twelve (12) month period.

(c) A limited exclusion from Regulated Substance Activity inventory reporting is hereby authorized for non-routine maintenance or repair of property in the Well Field Protection Overlay District provided the uses are limited as follows:

(1) The aggregate of Regulated Substances in use may not exceed fifty (50) gallons or four hundred (400) pounds at any time.

(2) The total use of Regulated Substances may not exceed one hundred (100) gallons or eight hundred (800) pounds in any twelve (12) month period.

(d) A limited exclusion from Regulated Substance Activity Inventory reporting is hereby authorized for Regulated Substances which are cleaning agents, provided however such cleaning agents are packaged for personal or household use or are present in the same form and concentration as a product packaged for use by the general public, and provided the aggregate inventory of such cleaning agents shall not exceed one hundred (100) gallons or eight hundred (800) pounds at any time. In no case shall Regulated Substances claimed under the exclusion include hydrocarbon or halogenated hydrocarbon solvents.

(e) A limited exclusion from Regulated Substance Activity Inventory Reporting is hereby authorized for medical and research laboratory uses in the Well Field Protection Overlay District, provided however, Regulated Substances shall be stored, handled or used in containers not to exceed five (5) gallons or forty (40) pounds of each substance and the aggregate inventory of Regulated Substances shall not exceed two hundred and fifty (250) gallons or two thousand (2,000) pounds.

(f) An exclusion from Regulated Substance Activity inventory Reporting is hereby authorized for the transportation of Regulated Substances through the Well Field Protection Overlay District provided that the transporting vehicle is in compliance with applicable City ordinances

6.

and Federal and Ohio laws and regulations, and provided that the regulated substance Is fuel
mg the transporting vehicle or
the transporting vehicle is in continuous transit, making delivery, or is stopped for a period of time
not to exceed seventy-two (?2)
hours.

(g) A limited exclusion from Regulated Substance Activity Inventory Reporting is hereby
authorized for owners and occupants of single or two-family residences provided, however, the
storage and use of Regulated
Substances are related to the maintenance of the residence or vehicles under control of the
occupant and provided waste
Regulated Substances are appropriately disposed of to a permitted solid waste facility or a
permitted publicly owned wastewater
treatment works.

(B) SPILLS, LEAKS OR DISCHARGES

(1) Any person with direct knowledge of a spill, leak or discharge of a Regulated Substance
within
the Well Field Protection Overlay District shall, if such spill, leak or discharge escapes
containment, contacts a non-impervious
ground surface and is not immediately and completely remediated, give notice to the
Superintendent of Water Supply and
Treatment, or the operator on duty at the Water Treatment facility by telephone. The notification
shall include at a minimum, the
location of the incident, name and telephone number, date and time thereof, type of substance(s),
concentration and volume, and
control or corrective action taken. Such notification shall in no way alleviate other local, state,
and federal reporting obligations
as required by law.

(2) Any entity or person who spills, leaks or discharges said substance(s) shall be liable for any
reasonable expense, loss or damages incurred by the City In response to such an Incident, in
addition to the amount of any fines
imposed on account thereof under Ohio and Federal law; said entity or person shall document and
maintain sufficient records so
as to reflect accurately the circumstances related to any such incident and develop and implement
procedures to substantially
eliminate the likelihood of reoccurrence of such spills, leaks or discharges as soon as practicable
following the Incident, but no
later than one hundred eighty (180) days after the Incident.

C3) The City of Dayton shall post signs in conspicuous places advising transporters of Regulated Substances of notification procedures in the event of a spill or accidental discharge.

(C) UNDERGROUND STORAGE TANKS

(1) Definition

An underground storage tank is any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of Regulated Substances and the volume of which (including the volume of underground pipes connected thereto) is ten (10%) percent or more beneath the surface of the ground. Flow-through process tanks are excluded from the definition of underground storage tanks.

(2) Well Field Protection Overlay District

(a) No storage of Regulated Substances, other than for vehicle fuel and vehicle lubricants and fuel for building and/or process heating may occur in underground storage tank systems in the Well Field Protection Overlay District, five (5) years from the effective date of this ordinance.

(b) Five (5) years from the effective date of this ordinance, underground storage tank systems for vehicle fuel and vehicle lubricants and fuel for building and/or process heating in the Well Field Protection Overlay District must be secondarily contained and monitored in accordance with plans submitted to and approved by the Director.

(D) FALSIFYING INFORMATION

No person shall make any false statement, representation, or certification in any report or other document filed or required to be maintained pursuant to this ordinance.

(E) RETENTION OF RECORDS

Any reports or records compiled or submitted pursuant to this shall be maintained by the user for a minimum of five (5) years or as enforcement or Judicial proceedings are being pursued, whichever

section

so long is longer.

8.

Section 53.04 PUBLIC WATER SUPPLY PROTECTION AUTHORITY (CA) APPLICATION

If any activity or use of Regulated Substance is deemed by the Director to pose a real and present danger of contaminating surface and/or ground water which would normally enter the public water supply, the Director is authorized to:

(C) Cause cessation of said activity or use of Regulated Substance;

(2) Require the provision of administrative controls and/or facilities sufficient to mitigate said danger;
and/or

(3) Cause the provision of pollution control and/or abatement activities.

(B) CONSIDERATIONS

When considering the exercise of any of the above authorities or actions, the Director shall ensure that the City's public water supply is reasonably and adequately protected from contamination for the present and the future. The Director shall make every reasonable effort to coordinate and act in concert with other regulatory entities in the exercise of the above authorities. The Director may take into consideration any evidence represented by the entity regarding cost effectiveness and the economic effectiveness and the economic impact imposed by the requirements or actions.

Section 53.05 _____

(A)

WELL FIELD PROTECTION FUND

ESTABLISHMENT OF THE WELL FIELD PROTECTION FUND

(1) The Well Field Protection Fund is hereby established to remediate pollution that could affect the public water supply and/or to pay the costs of acquiring interests in property necessary to reduce the risk of pollution of the public water supply. The Well Field Protection Fund can be used only for Well Field Protection Activities within the Well Field

Protection Overlay District and within the one (1) year capture zones of the well fields.

(2) The City of Dayton Water Rates shall be amended to Field Protection Charge applicable to the entire rate base. to generate revenue for the Well Field Protection Fund. include a Well This Charge is

9.

(3) All Interest and payments resulting from Well Field Protection Fund activities will be paid to the Well Field Protection Fund. All directly related administrative costs of the Well Field Protection Fund are reimbursable from the Well Field Protection Fund.

(4) Costs for Well Field Protection activities advanced

Water Fund or any other City source of funds are reimbursable from

Field Protection Fund.

(B) WELL FIELD PROTECTION BOARD

(1) The Well Field Protection "Board" is hereby The Board shall consist of the Directors of Water, Finance The Board shall determine the Well Field Protection Charge the City of Dayton Water Rates subject to approval by the from the the Well established.

and Planning. to be part of City Commission.

(2) The Board shall reduce the Well Field Protection Charge if the Well Field Protection Fund exceeds the limitations as set forth in Section 53.05 (C)C1) subject to approval by the City Commission.

(3) The Board shall, subject to approval by the City Commission, develop rules, regulations and procedures for the administration of the Well Field Protection Fund.

(C) LIMITATIONS

C1) The Well Field Protection Fund shall be limited to \$10,000,000.00.

(2) Interests in private property will not be acquired with funding under the Well Field Protection Fund in order to

compensate the owner for compliance with:

- (a) a lawful order, requirement or declaration from any regulatory agency; or
- (b) a requirement to obtain or maintain insurance coverage.

Section 53.06 WELL FIELD PROTECTION APPEALS BOARD

(A) APPEALS

Any person may appeal an action of the Director made pursuant to Section 53.04 by filing with the City Manager a Notice of Appeal within

10.

twenty-one (21) days of said action and a statement of appeal within thirty (30) days of the date that the order being appealed was issued.

A Notice of Appeal shall include as a minimum: name; address; telephone number; date; and a statement of Intent to appeal. A Statement of

Appeal shall include all information contained in the Notice of Appeal, a description of the nature of the appeal, and any pertinent documentation.

(B) APPEALS BOARD

The Board of Well Field Protection Appeals is hereby established. Said Board shall consist of the Director of

Urban Development and four (4) designees to be named by the City Manager. Three (3) designees shall be representative of the

business and environmental communities. One (1) designee shall be appointed upon the recommendation of the Priority Board

Chairpersons' Council. No appointment shall be final unless approved by the Commission. The four (4) designees shall serve for a term of

two (2) years. Said Board shall have the authority to take appeals, investigate matters related to said appeals, deny, uphold or otherwise

affirm or waive the Director's actions on a case by case basis. Said Board shall develop rules and regulations of operation

consistent with its authorities, and subject to approval by the City Commission. Section 53.99

PENALTIES FOR VIOLATIONS

(A) ~VANDALISM

A violation of the provisions of Section 53.01(F) shall constitute a misdemeanor of the fourth degree,
punishable as provided in Section 130.99 R.C.G.O.

(B) OTHER VIOLATIONS

Any person who violates or continues to violate any provisions other than Section 53.01 (F), or
any person who violates or
continues to violate any provisions other than Section 53.01 (F), beyond the time limit for
compliance set forth by the Director,
Notice of Violation or compliance schedule established by the Director, shall be subject to the
following:

(1) A fine in an amount not to exceed Five Hundred Dollars (\$500.00).

(2) A subsequent violation of the same provision of this ordinance may constitute a
misdemeanor of the first
degree, punishable

11.
as provided in Section 130.99 R.C.G.O. by a fine of up to One Thousand Dollars (\$1,000.00) and
a term of imprisonment of up to six (6) months.
if the violation is a continuing one, each day of such violation shall constitute a separate violation.

Section 2. For the reasons stated in the preamble hereof, this ordinance is declared ~ be an
emergency measure and shall
take effect Immediately upon Its passage.

Passed by the ~

1988

Signed by the Mayor

1988

12.
AN ORDINANCE

Supplementing The Revised Code Of General
Ordinances By The Enactment Of Section 50.17
To Establish A Well Field Protection Fund
Surcharge.

City's
charge
levied

Whereas, in order to establish a fund sufficient to protect the drinking water supply from
contamination, It Is necessary that

a ~e assessed to water users over and above the charges presently for the consumption of
water; Now, Therefore,

BE IT ORDAINED BY ThE COMMISSION OF ThE CITY OF DAYTON:

Section 1. That the Revised Code of Ceneral Ordinances, be and it

is hereby supplemented by the enactment of ~50.17 which shall read as follows:

Section 50.17 Well Field Protection Fund Surcharge

Effective July 1, 1988, there shall be assessed against
users of water In addition to the rates established by Ordinance
27144, a Well Field Protection Fund surcharge of One Dollar per
1,000 cubic feet of water supplied.

Passed by the Commission , 1988

Signed by the Mayor , 1988

